

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Brickell	Team: Squad #1	CCRB Case #: 201311857	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thu, 12/19/2013 8:30 PM	Location of Incident: [REDACTED]	Precinct: 61	18 Mo. SOL 06/19/2015	EO SOL 6/19/2015	
Date/Time CV Reported Fri, 12/20/2013 6:15 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 12/20/2013 6:15 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Graham Brathwaite	18902	943020	061 PCT
2. SGT Chad Manzi	00000	929443	061 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Pinero	28232	951062	061 PCT
2. SGT Scott Kletzkin	00710	933897	061 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Graham Brathwaite	Abuse of Authority: PO Graham Brathwaite issued a summons to § 87(2)(b) on Kings Highway and East 16th Street in Brooklyn.	A . § 87(2)(g) [REDACTED]
B . POM Graham Brathwaite	Discourtesy: PO Graham Brathwaite spoke discourteously to § 87(2)(b) en route to the 61st Precinct stationhouse in Brooklyn.	B . § 87(2)(g) [REDACTED]
C . SGT Chad Manzi	Discourtesy: Sgt. Chad Manzi spoke discourteously to § 87(2)(b) inside the 61st Precinct stationhouse in Brooklyn.	C . § 87(2)(g) [REDACTED]
D . SGT Chad Manzi	Other: Sgt. Chad Manzi intentionally provided a false official statement to the CCRB.	D . § 87(2)(g) [REDACTED]

Case Summary

On December 20, 2013, § 87(2)(b) filed the following complaint with the Civilian Complaint Review Board (CCRB) via the online website on behalf of himself (encl. 7A - C). On December 19, 2013, § 87(2)(b) interacted with officers from the 61st Precinct on the corner of Kings Highway and East 16th Street in Brooklyn, and the following allegations resulted:

Allegation A – Abuse of Authority: PO Graham Brathwaite issued a summons to § 87(2)(b) on Kings Highway and East 16th Street in Brooklyn.

§ 87(2)(g)

Allegation B – Discourtesy: PO Graham Brathwaite spoke discourteously to § 87(2)(b) en route to the 61st Precinct stationhouse in Brooklyn.

Allegation C – Discourtesy: Sgt. Chad Manzi spoke discourteously to § 87(2)(b) inside the 61st Precinct stationhouse in Brooklyn.

§ 87(2)(g)

This matter was ineligible for mediation because § 87(2)(b) expressed interest in filing a lawsuit.

Due to media coverage, this case is on the agency's Sensitive Case List. On January 28, 2015, this case was reopened for reconsideration at the behest of § 87(2)(b)'s lawyer, § 87(2)(b).

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- § 87(2)(b)

CCRB Statement:

On February 10, 2014, § 87(2)(b) was interviewed at the CCRB (encl. 8A - C). On February 26, 2014, § 87(2)(b) gave a statement for his notice of claim (encl. 9A - D). On July 1, 2014, § 87(2)(b) testified at a 50-h hearing (encl. 9E – 9J3). § 87(2)(g)

On December 19, 2013, at approximately 8:30 p.m., § 87(2)(b) exited the subway station on Kings Highway between East 15th and East 16th Streets in Brooklyn. He had not consumed any drugs or alcohol prior to the incident. § 87(2)(b) saw a marked RMP honking at a vehicle parked in a no standing zone in front of the Chase Bank located at § 87(2)(b), which was across the street. An unidentified man exited the bank, entered the vehicle, and drove away. The RMP then pulled into the spot the vehicle had been occupying and two uniformed officers exited and got in line for a food cart nearby. There were two individuals at the food cart that § 87(2)(b) could not identify, as well as the food vendor. § 87(2)(b) was bothered by the fact that the officers made the person leave and then took the same spot.

§ 87(2)(b) crossed the street and approached one of the officers, whom § 87(2)(b) described as a black male in his mid-thirties, five feet eleven to six feet tall, with a muscular build and bald head, with the nameplate “Brathwaite,” identified via the investigation as PO Graham Brathwaite. § 87(2)(b) asked him, “Do you think it is right to kick a car out of a bus stop?” PO Brathwaite seemed annoyed and asked, “Excuse me?” § 87(2)(b) asked, “Do you think what you did is right?”

PO Brathwaite told § 87(2)(b) to walk away, and § 87(2)(b) asked, “I can’t ask you a question?” PO Brathwaite asked § 87(2)(b) to see his identification and § 87(2)(b) asked him if he was obligated to do so. PO Brathwaite told § 87(2)(b) to turn around, he complied by turning around, and PO Brathwaite handcuffed him. § 87(2)(b) did not resist in any way and was handcuffed without incident. Throughout the interaction § 87(2)(b) was calm and did not raise his voice or make any sudden movements with his hands. At no time did a crowd form at the incident location. The entire conversation lasted two to three minutes.

PO Brathwaite removed everything from § 87(2)(b)’s pockets including his identification. He walked § 87(2)(b) to the RMP, placed him in the back seat. PO Brathwaite spoke with someone via radio, and then by telephone, explaining that he had arrested § 87(2)(b). PO Brathwaite and the second officer, whom § 87(2)(b) described as a Hispanic male in his late twenties, shorter than PO Brathwaite, with a medium build and black hair, with the nameplate “Pinero,” identified via the investigation as PO Jason Pinero, stood near the trunk of the vehicle and had a conversation about § 87(2)(b). § 87(2)(b) did not recall whether the door or window was open, however, he could hear the conversation. In sum and substance, PO Pinero said that PO Brathwaite had scared § 87(2)(b) and that he should let him go. PO Brathwaite said, “Who the fuck does he think he is questioning me?”

PO Pinero got in the back of the RMP with § 87(2)(b). He was holding § 87(2)(b)’s cell phone and some of the other personal effects, and he told § 87(2)(b) that his belongings were safe. About two minutes after § 87(2)(b) was placed in the vehicle PO Brathwaite told § 87(2)(b) that he was going to let him go with a summons, but got in the driver’s seat and started driving. PO Brathwaite berated § 87(2)(b) during the ride to the stationhouse. PO Brathwaite asked § 87(2)(b) “Who the fuck do you think you are?” § 87(2)(b) did not respond.

They arrived at the 61st Precinct stationhouse and PO Brathwaite escorted § 87(2)(b) inside and brought him in front of the desk. § 87(2)(b) explained what had happened at the scene to the desk officer, whom § 87(2)(b) described as a white male in his late thirties or early forties, with a muscular build and black hair, with the nameplate “Manzi,” identified via the investigation as Sgt. Chad Manzi. Sgt. Manzi said twice, “Who do you think you are? That is none of your fucking business.” There was an additional, uniformed officer, behind the desk, whom § 87(2)(b) described as an older, white male, with a heavy build, identified via the investigation as Sgt. Scott Kletzkin. After sixty to ninety minutes, PO Brathwaite released § 87(2)(b) with two summonses for disorderly conduct.

Field Work (encl. 10)

On April 1, 2014, the undersigned conducted fieldwork at the incident location.

The undersigned spoke with the halal food vendor where the incident took place. The vendor, who declined to provide his name, was not present at the time of the incident, however, he provided contact information for the proprietors of the cart. On April 11, 2014, the undersigned sent a subpoena and free content letter to them. On April 17, 2014, the undersigned spoke with § 87(2)(b) one of the proprietors of the food cart. § 87(2)(b) said that his employee, § 87(2)(b) was working on the date of the incident, and he provided § 87(2)(b)'s phone number. On April 21, 2014, the undersigned spoke with § 87(2)(b) who said that he did not witness any police incident on the date of the incident.

NYPD Statements:

Subject Officer: PO GRAHAM BRATHWAITE

- *On the date of the incident, PO Brathwaite was § 87(2)(b). § 87(2)(b)*
- *PO Brathwaite was assigned to Sector Patrol CDF, worked from 3:00 p.m. until 11:35 a.m., worked with PO Jason Pinero, was assigned to marked RMP § 87(2)(b) and was dressed in uniform.*

Summonses (encl. 11A - D)

PO Brathwaite issued two summonses to § 87(2)(b) § 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) The narrative was as follows:

“At the time and place of occurrence, defendant did in full view of the public did create alarm, annoyance by yelling at arresting officer very loudly after being asked to disperse. Defendant did refuse to comply with lawful order and stated, ‘Why do I have to leave because you asked me?’”

§ 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b)
§ 87(2)(b) The narrative was as follows:

“At the time and place of occurrence, defendant did create annoyance and alarm in full view of the public by yelling at arresting officer very belligerent and violently stating, “Do you think it’s right to kick a car out of the bus stop?”

Memo Book (encl. 12A - C)

At 8:25 p.m. PO Brathwaite had one male stopped at the corner of East 16th Street and Kings Highway. At 8:30 p.m. he arrested the individual. At 9:30 p.m. he issued two summonses to

§ 87(2)(b) § 87(2)(b) for § 87(2)(b), § 87(2)(a) CPL 160.50

§ 87(2)(b).

CCRB Statement:

On April 29, 2014, PO Brathwaite was interviewed at the CCRB (encl. 13A - C). His statement is summarized below.

On December 19, 2013, at approximately 8:20 p.m., PO Brathwaite and PO Pinero were driving westbound on East 16th Street in Brooklyn. PO Brathwaite observed a vehicle illegally parked in the bus lane on the right side of the street. He saw an individual, who he believed to be the motorist, inside the Chase branch taking money out of an ATM. In lieu of writing the motorist a summons for parking illegally, PO Brathwaite activated the sirens to alert the individual that he needed to move his vehicle. The man exited the Chase and pulled away from the spot. PO Brathwaite then pulled into the area that the motorist had vacated and exited his vehicle in order to speak with the Halal food cart vendor next to the spot. PO Brathwaite said that the incident location is a robbery prone area, and that he wanted to speak to the vendor regarding any potential issues.

PO Brathwaite stood on the sidewalk next to the halal cart and spoke with the vendor, and PO Pinero was one to two feet to his left. After approximately two to four minutes, PO Brathwaite heard an “irate” voice from behind him, and turned and saw § 87(2)(b) approaching him. PO Brathwaite said that it was dark outside, but the area was lit somewhat, and he could clearly see § 87(2)(b)'s hands. PO Brathwaite did not see any bulges or other indications that § 87(2)(b) had a weapon on his person. PO Brathwaite said that § 87(2)(b) was acting belligerently, described his demeanor as hostile, and said that although he was not screaming at the “top of his lungs,” that § 87(2)(b) was speaking very loudly, and stood approximately two to three feet from him.

§ 87(2)(b) asked PO Brathwaite if what he did was right, however, PO Brathwaite did not initially understand the question. He asked § 87(2)(b) to take a step back, however, he remained standing where he was. PO Brathwaite said that as § 87(2)(b) spoke, his hands were slightly above his waist, and he shook them up and down. PO Brathwaite was nervous because he believed that § 87(2)(b) might attack him because he was irate and acting belligerently, and because it was dark outside. § 87(2)(b) responded that it was his right to question an officer, and asked PO Brathwaite again if it was right that he kicked out the vehicle parked illegally in the bus stop and then occupied the same spot to get food.

PO Brathwaite asked § 87(2)(b) if he had a police emergency or needed assistance, and § 87(2)(b) belligerently repeated his question to PO Brathwaite. PO Brathwaite said § 87(2)(b) spoke louder over the course of the conversation. § 87(2)(b) did not make any gestures with his hands that led PO Brathwaite to believe he was becoming more belligerent, however, PO Brathwaite said that in his experience, it is sometimes only a “matter of seconds” before someone strikes an officer when they have their hands positioned in such a manner. PO Brathwaite told § 87(2)(b) that if he did not have an emergency or require assistance that he should leave the scene. § 87(2)(b) refused and said that it was his right to question an officer, and became louder. PO Brathwaite did not recall whether there were any civilians in the area, or if anyone stopped to look as a result of § 87(2)(b) yelling.

PO Brathwaite asked § 87(2)(b) for his identification in order to issue him a summons for disorderly conduct. § 87(2)(b) swung one of his arms, which PO Brathwaite believed was a sign of resistance because he did not comply with his order. PO Brathwaite asked § 87(2)(b) for his identification a second time, and § 87(2)(b) gave it to him. PO Brathwaite asked § 87(2)(b) to turn around, and he complied, at which point PO Brathwaite placed handcuffs on § 87(2)(b). He told PO Pinero, who was standing one to two feet away, that he was arresting § 87(2)(b) for disorderly conduct, and PO Pinero agreed with his assessment of the situation. PO Brathwaite patted down § 87(2)(b), removed his phone and other belongings from him, and placed him in the

rear of the RMP. PO Pinero got into the vehicle as well. At approximately 8:30 p.m., PO Brathwaite called Sgt. Kletzkin over the radio to inform him that he had one under arrest and requested that the arrest be validated. Sgt. Kletzkin told him to bring § 87(2)(b) to the stationhouse to do so. PO Brathwaite did not recall whether he had any conversation with PO Pinero outside of the RMP once § 87(2)(b) was placed inside. He denied saying, “Who the fuck does he think he is questioning me,” or using any profanity.

PO Brathwaite entered the RMP and immediately drove back to the 61st Precinct stationhouse. He did not recall whether he had any conversation with § 87(2)(b) however, he said that § 87(2)(b) was very irate, and rambled about the fact that he was a law student and that there were cameras in the area of the incident for the duration of the ride, which lasted approximately six minutes. PO Brathwaite did not recall whether he said, “Who the fuck do you think you are,” or used any profanity toward § 87(2)(b). The officers exited the vehicle upon arrival at the stationhouse. PO Brathwaite escorted § 87(2)(b) into the stationhouse and brought him to the desk. PO Brathwaite did not recall whether PO Pinero entered the stationhouse or remained with the vehicle.

When they arrived at the desk, § 87(2)(b) told the desk officer, Sgt. Chad Manzi, that he wanted to speak to a sergeant. He was very upset and belligerent, and was yelling. Sgt. Manzi told § 87(2)(b) that he was a sergeant, and asked him what he wanted to speak to him about. § 87(2)(b) asked Sgt. Manzi, “Is it wrong to ask a police officer if it’s right to kick a motor vehicle out of a bus stop to get food?” Sgt. Manzi responded, “Who are you to ask an officer doing his job what’s right and what’s wrong?” PO Brathwaite did not recall whether Sgt. Manzi used any profanity. Sgt. Kletzkin was also in the area of the desk at the time.

PO Brathwaite placed § 87(2)(b) in a holding cell and ran a warrant check for him. The check was negative, and PO Brathwaite had § 87(2)(b) fill out a pedigree form indicating that he had no complaints and was not injured. He returned § 87(2)(b)’s property to him and issued him two summonses for disorderly conduct. When shown the narratives of the summonses, PO Brathwaite said that they were fair and accurate representations of his observations of § 87(2)(b) at the time of the incident. PO Brathwaite released § 87(2)(b) and he asked PO Brathwaite for his name and shield, which he provided verbally.

Witness Officer: PO JASON PINERO

- *On the date of the incident, PO Pinero was § 87(2)(b) old. § 87(2)(b)*
- *PO Pinero was assigned to Sector Patrol at the time of the incident. He worked from 3:00 p.m. until 11:35 p.m., was partnered with PO Graham Brathwaite, was assigned to marked RMP § 87(2)(b) and was in uniform.*

Memo Book (encl. 14A - D)

At 8:20 p.m. there was one male stopped at East 16th Street and Kings Highway. Male approached partner in his face. Partner had one under. At 8:28 p.m. he was arrested.

CCRB Statement:

On April 23, 2014, PO Pinero was interviewed at the CCRB (encl. 15A - B). His statement is summarized below.

On December 19, 2013, PO Pinero and PO Brathwaite pulled up to the corner of Kings Highway and East 16th Street in Brooklyn. PO Pinero exited the vehicle and walked to the food truck, located a few feet away on the sidewalk, to get a bottle of water. PO Pinero turned around and saw PO Brathwaite engaged in conversation with § 87(2)(b) four or five feet away. PO Pinero did not see § 87(2)(b) approach PO Brathwaite. He did not hear the conversation between them, could not describe the nature of the conversation, and could not describe the tone or volume of § 87(2)(b) or PO Brathwaite. They were standing next to each other, a few feet apart on the sidewalk. PO Pinero did not see § 87(2)(b) make any movements with his hands, and he was not doing anything other than speaking.

There were some people in the area, however, PO Pinero could not approximate how many. There was no one in the immediate vicinity, and none of the people in the area stopped as a result of the conversation between § 87(2)(b) and PO Brathwaite. When asked whether § 87(2)(b) was causing a public disturbance at the scene, PO Pinero said that he did not recall him doing so. PO Pinero walked over to § 87(2)(b) and PO Brathwaite. PO Brathwaite asked § 87(2)(b) for his identification and § 87(2)(b) complied. PO Brathwaite then placed § 87(2)(b) in handcuffs and put him in the rear passenger seat of the RMP. Less than a minute elapsed between the time when PO Pinero walked over and § 87(2)(b) was handcuffed, however, PO Pinero did not know the length of the conversation prior to his approach. PO Pinero did not observe § 87(2)(b) create alarm or annoyance by yelling at PO Brathwaite, § 87(2)(b) did not yell at PO Brathwaite prior to being handcuffed, and PO Pinero did not observe § 87(2)(b) behaving belligerently.

PO Brathwaite entered the driver's seat of the RMP, and PO Pinero got into the rear with § 87(2)(b). There was no conversation outside of the RMP after § 87(2)(b) was placed inside, and the officers entered the vehicle immediately. PO Pinero did not recall whether PO Brathwaite said, "Who the fuck does he think he is questioning me?" At no point did PO Brathwaite inform PO Pinero as to the reason that § 87(2)(b) was placed under arrest. PO Pinero did not recall PO Brathwaite using any profanity towards § 87(2)(b) including, "Who the fuck do you think you are?" § 87(2)(b) was not loud in the vehicle, and he did not yell at any point.

When they arrived at the stationhouse, PO Brathwaite brought § 87(2)(b) inside and PO Pinero remained in the RMP and collected PO Brathwaite's belongings to bring inside. PO Pinero was not in the vicinity of the desk while § 87(2)(b) was being processed, however, he saw him standing at the desk. He did not hear any conversation between § 87(2)(b) and any officer at the desk, and did not hear Sgt. Manzi say, "That is none of your fucking business." PO Pinero had no interaction with § 87(2)(b) at the stationhouse.

Subject Officer: SGT. CHAD MANZI

- *On the date of the incident, Sgt. Manzi was § 87(2)(b). § 87(2)(b)*
- *Sgt. Manzi was the desk officer, worked from 2:50 p.m. until 11:47 p.m., and was in uniform.*

Memo Book

Sgt. Manzi was the desk officer and thus was not required to keep a memo book.

CCRB Statement:

On February 21, 2014, Sgt. Manzi was interviewed by IAB (encl. 16A – B). On June 11, 2014, Sgt. Manzi was interviewed at the CCRB (encl. 16A - B). His statement is summarized below.

On December 19, 2013, at approximately 8:30 p.m., Sgt. Manzi was at the desk of the 61st Precinct stationhouse. PO Brathwaite and PO Pinero brought § 87(2)(b) in front of the desk in order to process his arrest for disorderly conduct. PO Brathwaite told Sgt. Manzi that § 87(2)(b) was acting up and yelling at him at the scene, however, § 87(2)(b) interjected during PO Brathwaite's story and said that he was not being truthful. § 87(2)(b) seemed agitated and tried to talk over PO Brathwaite, who seemed calm to Sgt. Manzi. § 87(2)(b) said that he had questioned PO Brathwaite, and that an argument ensued. Sgt. Manzi did not recall if § 87(2)(b) accused PO Brathwaite of using profanity, and did not recall any additional details about the conversation.

Sgt. Manzi told PO Brathwaite to release § 87(2)(b) with a summons for disorderly conduct if he did not have any open warrants. Sgt. Manzi told § 87(2)(b) to calm down, and explained that he would be released with summonses if he did not have any open warrants. He denied saying, "That is none of your fucking business," or using any profanity. PO Brathwaite filled out the requisite paperwork and pedigree card, and was at the desk with § 87(2)(b) for a few minutes. § 87(2)(b) was in the stationhouse for less than an hour before he was released with a disorderly conduct summons. In his statement to IAB, Sgt. Manzi denied speaking to § 87(2)(b) at all.

Witness Officer: SGT. SCOTT KLETZKIN

- *On the date of the incident, Sgt. Kletzkin was § 87(2)(b) old. § 87(2)(b)*
- *Sgt. Kletzkin was the Patrol Supervisor, worked from 2:50 p.m. until 11:47 p.m., worked with PO Yevgeniy Bushuyev, was assigned to marked RMP § 87(2)(b) and was in uniform.*

Memo Book (encl. 17A - B)

Sgt. Kletzkin did not have any memo book entries related to this incident. At 8:20 p.m., he resumed patrol with PO Bushuyev from the 61st Precinct.

CCRB Statement:

On May 14, 2014, Sgt. Kletzkin was interviewed at the CCRB (encl. 18A - B). His statement is summarized below.

On December 19, 2013, at approximately 8:00 p.m., Sgt. Kletzkin received a phone call from PO Brathwaite on his cell phone. PO Brathwaite said that he was "accosted" by an individual, § 87(2)(b) and that he screamed and shouted at PO Brathwaite causing a public disturbance to others. PO Brathwaite said that he wanted to place him under arrest for disorderly conduct, and Sgt. Kletzkin agreed based on the description of § 87(2)(b)'s behavior and verified the arrest via phone. The conversation lasted a minute or two. He did not hear PO Brathwaite use any profanity.

At approximately 8:20 p.m., Sgt. Kletzkin was leaving the stationhouse to resume patrol. He saw § 87(2)(b) standing in handcuffs in front of the desk from a distance of about fifteen feet away. § 87(2)(b) seemed upset and spoke very loudly to PO Brathwaite. Sgt. Kletzkin did not recall what § 87(2)(b) or PO Brathwaite said, however, the interaction did not seem unusual for an arrest. He did not recall whether PO Brathwaite raised his voice. Sgt. Kletzkin did not see Sgt. Manzi speak to § 87(2)(b) and did not hear Sgt. Manzi use any profanity towards § 87(2)(b) or say, "That is none of your fucking business." Sgt. Kletzkin did not speak with PO Brathwaite at the stationhouse regarding the arrest. He observed the interaction for a minute or two before

exiting the stationhouse to resume patrol. Sgt. Kletzkin did not recall where his partner was at the time.

Officers Not Interviewed

Neither § 87(2)(b) nor any of the officers interviewed, placed PO Yevgeniy Bushuyev, Sgt. Kletzkin's partner, in the area of the desk at the time of the alleged discourtesy by Sgt. Manzi. Therefore, PO Bushuyev was not interviewed. PO Thomas Lee was the telephone switchboard (T/S) operator on the date of the incident, however, he left the service as of February 1, 2014, and was not interviewed (encl. 23K).

Attempts to Obtain Video Footage

On April 1, 2014, the undersigned spoke with the proprietor of a Jewish school for girls up the street from the incident location due to an exterior camera that could have potentially seen the incident. The camera footage resets every thirty days, and was no longer available.

On April 9, 2014, the undersigned received the surveillance footage from the Citibank branch located at the incident location. There were no external cameras at the location, and the interior cameras did not have any footage of the incident.

There was another potential camera at "§ 87(2)(b)," located at § 87(2)(b). On April 9, 2014, the undersigned spoke with § 87(2)(b) the manager of the business, who said that the video footage is stored for twenty days maximum, and was no longer available.

NYPD Documents

61st Precinct Command Log (encl. 19A - E)

PO Brathwaite arrested § 87(2)(b) for disorderly conduct at 8:32 p.m., and he was booked at 8:37 p.m., and released at 9:30 p.m. with summonses § 87(2)(b), § 87(2)(a) CPL 160.50

Summons for Incident and Disposition (encl. 23A – 23B1)

- § 87(2)(b), § 87(2)(a) 160.50
§ 87(2)(b), § 87(2)(a) CPL 160.50 A check of the New York State Unified Court System Ecourts did not reveal any future court dates.

Status of Civil Proceedings (encl. 9A - D)

- § 87(2)(b) filed a notice of claim with the City of New York on February 26, 2014, claiming trauma, shock, debasement, fright, fear, humiliation, embarrassment, and physical, psychological, and emotional injury, pain and suffering. § 87(2)(b) is seeking unspecified "adjustment and payment" as redress. On March 26, 2014, § 87(2)(b) filed a complaint against the City of New York (encl. 9L3 – 9U3). § 87(2)(b) provided 50-h testimony on § 87(2)(b)

Civilians CCRB History (encl. 4)

- This was the first CCRB complaint involving § 87(2)(b)

Subject Officers CCRB History

- PO Graham Brathwaite has been a member of the service for seven years and there are no substantiated CCRB allegations against him (encl. 2A).

- Sgt. Chad Manzi has been a member of the service for eleven years and there are no substantiated CCRB allegations against him (encl. 2B).
- The Internal Affairs name check and Central Personnel Indexes for PO Brathwaite, PO Pinero and Sgt. Manzi are included in the casefile (encl. 3A – 3S)

Conclusion

Identification of Subject Officers

§ 87(2)(b) identified the officer that issued him summonses and used profanity towards him as PO Brathwaite. PO Brathwaite prepared the summonses and was the primary officer that interacted with § 87(2)(b) at the scene. Therefore, Allegations A and B are pleaded against PO Brathwaite.

§ 87(2)(b) identified the officer that used profanity towards him at the desk as Sgt. Manzi. Sgt. Manzi was the desk officer at the time that § 87(2)(b) was arrested and brought into the stationhouse. Therefore, Allegation C is pleaded against Sgt. Manzi.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: PO Graham Brathwaite issued a summons to § 87(2)(b) on Kings Highway and East 16th Street in Brooklyn.

It is undisputed based on consistent testimony from § 87(2)(b) and PO Brathwaite that § 87(2)(b) confronted PO Brathwaite about parking in a spot that he had just instructed another vehicle to vacate. § 87(2)(b) asked twice whether PO Brathwaite’s behavior was appropriate before PO Brathwaite asked § 87(2)(b) to leave the scene. § 87(2)(b) did not leave, but verbalized his right to question an officer, at which point PO Brathwaite requested his identification. At no point during the incident did a crowd form.

§ 87(2)(b) testified that he remained calm throughout the interaction and did not raise his voice. He denied making any sudden movements with his hands.

PO Brathwaite described § 87(2)(b)’s behavior as belligerent and violent, and said that he yelled throughout the incident. PO Pinero stood four or five feet away from PO Brathwaite and § 87(2)(b) during the incident. He did not observe § 87(2)(b) create alarm or annoyance by yelling at PO Brathwaite, and he did not observe § 87(2)(b) behaving belligerently or causing a public disturbance. There were some people in the area, however, none of them stopped as a result of the conversation between § 87(2)(b) and PO Brathwaite.

According to Penal Law § 240.20 (6), a person is guilty of disorderly conduct when, “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he congregates with other persons in a public place and refused to comply with a lawful order of the police to disperse.” According to Penal Law § 240.20 (1), a person is guilty of disorderly conduct when, “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he engaged in violent, tumultuous or threatening behavior.” (encl. 0A). In interpreting Penal Law § 240.20, courts have held that the disorderly conduct statute bans activity that a reasonable person would not tolerate. *People v. Bakolas*, 59 N.Y.2d 51 (1983) (encl. 0B - D). Flailing and yelling, on a public street or in a public accommodation like a McDonald’s, are not, alone, sufficient to charge disorderly conduct. *People v. Baker*, 20 N.Y.3d 354 (2013) (encl. 0E - J) and *People ex rel. Fanelli v. Doe*, 85 Misc. 2d 592 (Utica City Ct. 1976) (encl. 0K - N). Conduct which creates a nuisance to police officers is not in and of itself disorderly conduct, and

there has to be an indication that the conduct created or recklessly risked creating a public nuisance. *Fanelli, supra.*, *People v. Richardson*, 30 Misc. 3d 1204(A) (Crim. Ct., New York Co. 2010) (encl. 0O - Q) and *Matter of Armell N.*, 28 Misc. 3d 528 (Fam Ct., Kings Co. 2010) (encl. 0R - U).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: PO Graham Brathwaite spoke discourteously to § 87(2)(b) en route to the 61st Precinct stationhouse in Brooklyn.

According to § 87(2)(b) during the ride to the stationhouse, PO Brathwaite asked him, “Who the fuck do you think you are?”

PO Brathwaite denied saying “Who the fuck do you think you are,” or using any profanity. PO Pinero did not recall whether PO Brathwaite said, “Who the fuck do you think you are?” He did not recall whether PO Brathwaite used profanity towards § 87(2)(b) at any point.

§ 87(2)(g)

Allegation C – Discourtesy: Sgt. Chad Manzi spoke discourteously to § 87(2)(b) at the 61st Precinct stationhouse in Brooklyn.

According to § 87(2)(b) he explained the circumstances of his arrest to Sgt. Manzi, who replied, “Who do you think you are? That is none of your fucking business.”

Patrol Guide Procedure 203-09 instructs officers to be courteous and respectful (encl. 1).

In his initial statement to IAB, which was made four months prior to his CCRB statement, Sgt. Manzi denied speaking to § 87(2)(b) in any capacity, however, in his CCRB testimony he recalled the incident with significant detail and confirmed that he spoke with § 87(2)(b) at the desk. Sgt. Manzi denied saying, “That is none of your fucking business,” or using any profanity toward § 87(2)(b). Sgt. Kletzkin did not hear Sgt. Manzi say, “That is none of your fucking business,” or use any profanity towards § 87(2)(b). PO Brathwaite testified that Sgt. Manzi asked § 87(2)(b) “Who are you to ask an officer doing his job what’s right and what’s wrong,”

but did not recall whether Sgt. Manzi used any profanity. PO Pinero was not in the vicinity of the desk while § 87(2)(b) was processed.

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date